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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,321	07/01/2003	Karl W. Schakel	Schakel-NonProv	7710
33549	7590	05/08/2006	EXAMINER	
SANTANGELO LAW OFFICES, P.C. 125 SOUTH HOWES, THIRD FLOOR FORT COLLINS, CO 80521			WARE, DEBORAH K	
			ART UNIT	PAPER NUMBER

1651

DATE MAILED: 05/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/612,321

Applicant(s)

SCHAKEL ET AL.

Examiner

Deborah K. Ware

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) 31-36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/1/03</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Claims 1-36 are pending.

#### ***Drawings***

The drawings are objected to because the Figures 1A and 1B and 3, are not really figures but appear to be data, and it would appear that the data may be represented in the specification and not as Figures because they are not drawings per se. Applicants are invited to explain how these are Figures as supported by the M.P.E.P., or to resubmit all drawings with new sheet numbers and drawing figure numbers and as well as amend the specification and disclosure where necessary to reflect the same changes as made to the figures.

#### ***Election/Restrictions***

Applicant's election without traverse of Group I, claims 1-30, in the reply filed on February 13, 2006, is acknowledged, as is the extension of time for filing the reply. Claims 31-36 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention(s), there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on February 13, 2006.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-30 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter

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which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The Heritage Complete™, Heritage Gold™, Osteoguard™ and Heritage Platinum™ are not clearly described in the instantly filed specification in terms of how they are made and what the precise components are and in what amounts, etc. Trademark products can be discontinued and also can change over time. It is unclear from the specification what these ingredients are intended to be in the claims. There is not adequate written description in the specification to enable one of skill in the art on how to provide for these products if they should become discontinued or changed by the manufacturer and/or commercial provider of these trademark products.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims are rendered vague and indefinite for the recitation of trademark products since it is unclear what these products are per se. What are these products made of, how are the products made, and what do they contain and in what amounts are the constituents of these products contained in the products. The trademark products are not clearly supported in terms of describing the ingredients and in what amounts of these ingredients are required. \

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGrew et al (US 6949264) in view of Ramackers (US 6506413), Blauel et al (US 5536523), Hart (6133317) and Yura et al (US 7005513).

Claims are drawn to health enhancement system (i.e. nutraceutical) comprising ingesting varied amounts of flax oil, omega-3 oil, shark cartilage, montmorillinite minerals, vitamins C and E, beta carotene, various Heritage consumer health products, Cat's Claw, essiac tea and hydrazine sulfate.

McGrew et al teach health enhancement system comprising ingesting varied amounts of vitamins C and E, Cat's Claw, green tea, Heritage consumer products and

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minerals (note column 7, line 5, column 9, line 16-17 and column 2 of page 4, lines 17-20, and column 9, line 19, respectively). Note cancer treatment system disclosed at column 7, line 7.

Ramackers teaches ingesting flax oil, omega-3 oil and montmorillonite mineral nutraceutical treating system for diseases and syndromes to enhance the health. Note the abstract. Also note column 3, line 3 and column 9, line 15 and 16 and 24.

Blauel et al teach a healthy spread which contains beta carotene and flax oil, and omega-3 oil, note column 1, lines 40-55, column 2, line 35, column 4, line 31 and column 5, line 16.

Hart teaches a therapeutic and nutritional and natural herbal alternative cancer treatment system which includes Essiac, note page 2, column 2, lines 1-7.

Yura et al teach ingesting an organic drug system for enhancing health comprising shark cartilage and hydrazine sulfate, note column 7, lines 49 and 50, and the entire abstract.

The claims differ from McGrew et al in that specific Heritage consumer products, such as Heritage Gold, Platinum, Complete and Osteoguard, as well as montmorillonite, beta carotene, flax oil, omega-3 oil, shark cartilage, hydrazine sulfate, essiac tea ingredients are not disclosed.

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was filed to combine the cited references of McGrew et al , Ramackers et al, Blauel et al, Hart and Yura et al in order to provide for a health enhancement system comprising ingesting each of these disclosed ingredients in varied

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optimal amounts for enhancing health as each are disclosed in the cited prior art for enhancing health which is the identical purpose as claimed. Furthermore, a cancer treatment system is disclosed as well to be ingested. Also to optionally include cruciferous vegetables is clearly an obvious modification of the cited prior art since these ingredients as disclosed by the cited prior art; and each disclosed to be nutritionally effective and to add vegetables to a diet for a health enhancement system is within the skill of an artisan. Further, to vary the amounts to optimize a health enhancement system is within the skill of an ordinary artisan. The claims are prima facie obvious in the absence of persuasive evidence to the contrary.

All claims fail to be patentably distinguishable over the state of the art discussed above and cited on the enclosed PTO-892 and/or PTO-1449. Therefore, the claims are properly rejected.

The remaining references listed on the enclosed PTO-892 and/or PTO-1449 are cited to further show the state of the art.

No claims are allowed.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah K. Ware whose telephone number is 571-272-0924. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

  
**DEBORAH K. WARE**  
**PATENT EXAMINER**

Deborah K. Ware  
April 29, 2006